

Chapter 4

Consultation, Review, and Permit Requirements

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This chapter addresses federal statutes, implementing regulations, and Executive Orders potentially applicable to the proposed project. This draft EIS is being sent to tribes, federal agencies, and state and local governments as part of the consultation process for this project.

National Environmental Policy Act

This EIS has been prepared by Bonneville pursuant to regulations implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), which requires federal agencies to assess the impacts that their actions may have on the environment. Bonneville's proposal to construct the 79-mile transmission line requires that we assess the potential environmental effects of the proposed project, describe them in an EIS, make the EIS available for public comment, and consider the impacts and comments when deciding whether to proceed with the project.

Threatened and Endangered Species and Critical Habitat

The Endangered Species Act of 1973 (16 U.S.C. 1536) as amended in 1988, establishes a national program for the conservation of threatened and endangered species of fish, wildlife, and plants and the preservation of the ecosystems on which they depend.

The act is administered by the U.S. Fish and Wildlife Service and, for salmon and other marine species, by the National Marine Fisheries Service. The act defines procedures for listing species, designating critical habitat for listed species, and preparing recovery plans. It also specifies prohibited actions and exceptions.

Section (7a) requires federal agencies to ensure that the actions they authorize, fund, and carry out do not jeopardize endangered or threatened species or their critical habitats. Section 7(c) of the Endangered Species Act and the federal regulations on endangered species coordination (50 CFR Section 402.12) require that federal agencies prepare

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biological assessments addressing the potential effects of major construction actions on listed or proposed endangered species and critical habitats.

Bonneville requested information on the occurrence of listed species in the project corridor and vicinity; letters from U.S. Fish and Wildlife Service and National Marine Fisheries Service are included in Appendix A. Oregon Department of Fish and Wildlife staff were also interviewed for information on special-status species. The U.S. Fish and Wildlife Service identified several terrestrial and aquatic species as potentially occurring in the project area.

Jones & Stokes biologists conducted field surveys of the project corridor during summer 2001.

Potential impacts to Threatened and Endangered plant, animal, and fish species are discussed in Chapter 3 in the sections Streams, Rivers and Fish; Vegetation; and Wildlife.

Fish and Wildlife Conservation

Fish and Wildlife Conservation Act and Coordination Act

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 et seq.) encourages federal agencies to conserve and promote the conservation of nongame fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) requires federal agencies undertaking projects affecting water resources to coordinate with the U.S. Fish and Wildlife Service and the state agency responsible for fish and wildlife resources.

Mitigation measures designed to conserve fish, wildlife, and their habitat are listed in Chapter 3 in the sections Streams, Rivers and Fish; Vegetation; and Wildlife. Standard erosion control measures would be used during construction to control sediment movement into streams, protecting water quality and fish habitat.

Essential Fish Habitat

Public Law 104-297, the Sustainable Fisheries Act of 1996, amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This established new requirements for Essential Fish Habitat descriptions in federal fishery management plans and required federal agencies to consult with National Marine Fisheries Service on activities that may adversely affect Essential Fish Habitat. The Magnuson-Stevens Act requires all fishery management councils to amend their fishery management plans to describe and identify Essential Fish Habitat for each managed fishery. The Pacific Fishery Management Council has issued such an amendment in the form of Amendment 14 (1999) to the Pacific Coast Salmon Plan. This amendment covers Essential Fish Habitat for all fisheries under NMFS jurisdiction that would

potentially be affected by the proposed action. Specifically, within the area of the proposed project these are the chinook and coho salmon fisheries. Essential Fish Habitat includes all streams, lakes, ponds, wetlands, and other currently viable water bodies and most of the habitat historically accessible to salmon. Activities above impassable barriers are subject to the consultation provisions of the Magnuson-Stevens Act.

Under Section 305(b)(4) of the act, National Marine Fisheries Service is required to provide Essential Fish Habitat conservation and enhancement recommendations to federal and state agencies for actions that adversely affect Essential Fish Habitat. Wherever possible, National Marine Fisheries Service uses existing interagency coordination processes to fulfill Essential Fish Habitat consultations with federal agencies. For the proposed action, this goal would be met by incorporating Essential Fish Habitat consultation into the Endangered Species Act Section 7 consultation process. See the Streams, Rivers and Fish section of Chapter 3 for discussion on essential fish habitat for this project.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act implements various treaties and conventions between the United States and other countries, including Canada, Japan, Mexico, and the former Soviet Union, for the protection of migratory birds (16 U.S.C. 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986, and 1989). Under the act, taking, killing, or possessing migratory birds or their eggs or nests is unlawful. Most species of birds are classified as migratory under the act, except for upland and nonnative birds such as pheasant, chukar, gray partridge, house sparrow, European starling, and rock dove.

The proposed project may impact birds. Potential impacts to migratory birds of special concern are discussed in the Wildlife section in Chapter 3. Bonneville would ensure appropriate mitigation measures are employed to minimize the risk of bird mortality.

Bald Eagle and Golden Eagle Protection Act

The Bald Eagle Protection Act prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions (16 U.S.C. 668-668d, June 8, 1940, as amended 1959, 1962, 1972, and 1978). Because a small number of both bald and golden eagles may reside within foraging distance of the proposed project, there is a remote possibility some mortality could result to either bald and/or golden eagles. However, because the act only covers intentional acts, or acts in “wanton disregard” of the safety of bald or golden eagles, this project is not viewed as subject to its compliance.

For further discussion regarding potential impacts to eagles, see the Wildlife section of Chapter 3. Potential impacts to bald and golden eagles will be further addressed in the biological assessment prepared for this project as required under the Endangered Species Act.

Responsibilities of Federal Agencies to Protect Migratory Birds

Executive Order 13186 directs each federal agency that is taking actions which may negatively impact migratory bird populations to work with the U.S. Fish and Wildlife Service to develop an agreement to conserve those birds. The protocols developed by this consultation are intended to guide future agency regulatory actions and policy decisions; renewal of permits, contracts, or other agreements; and the creation of or revisions to land management plans. Bonneville is part of the Department of Energy, is cooperating with the department in developing a memorandum of understanding with the U.S. Fish and Wildlife Service to comply with this mandate.

Heritage Conservation

Regulations established for the management of cultural resources include

- Antiquities Act of 1906 (16 U.S.C. 431-433);
- Historic Sites Act of 1935 (16 U.S.C. 461-467);
- Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq.), as amended;
- Archaeological Data Preservation Act (ADPA) of 1974 (16 U.S.C. 469 a-c);
- Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470 et seq.), as amended;
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.); and
- Executive Order 13007 Indian Sacred Sites.

For this project, Bonneville has undertaken the Section 106 consultation process with the State Historic Preservation Officer for both Washington and Oregon, the Advisory Council on Historic Preservation, and the affected Native American tribes. For this project, the Confederated Tribes of the Umatilla Indian Reservation; the Confederated Tribes of Warm Springs, Oregon; and the Yakama Nation were consulted. Bonneville's 1996 government-to-government agreement with 13 federally-recognized Native American Tribes of the Columbia River basin identifies the roles and responsibilities of both parties and provides guidance for the Section 106 consultation process with the Tribes.

The NHPA amendments specify that properties of traditional religious and cultural importance to a Native American Tribe (also known as Traditional Cultural Properties) may be determined to be eligible for inclusion on the National Register of Historic Places. In carrying out its responsibilities under Section 106, Bonneville is required to

consult with any Native American Tribe that attaches religious and cultural significance to any such properties.

NAGPRA requires consultation with appropriate Native American Tribal authorities prior to the excavation of human remains or cultural items (including funerary objects, sacred objects, and cultural patrimony) on federal lands or for projects that receive federal funding. NAGPRA recognizes Native American ownership interests in some human remains and cultural items found on federal lands and makes illegal the sale or purchase of Native American human remains, whether or not they derive from federal or Indian land. Repatriation, on request, to the culturally-affiliated Tribe is required for human remains.

Executive Order 13007 addresses “Indian sacred sites” on federal and Tribal land. “Sacred site” means any specific, discrete, narrowly delineated location on federal land that is identified by a Tribe, or Tribal individual determined to be an appropriately authoritative representative of a Native American religion. The site is sacred by virtue of its established religious significance to, or ceremonial use by, a Native American religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. This order calls on agencies to do what they can to avoid physical damage to such sites, accommodate access to and ceremonial use of Tribal sacred sites, facilitate consultation with appropriate Native American Tribes and religious leaders, and expedite resolution of disputes relating to agency action on federal lands.

The Cultural Resources section in Chapter 3 of this EIS discusses cultural resources along the project corridor, potential impacts, and mitigation measures to protect archaeological and historic resources.

State, Areawide, and Local Plan and Program Consistency

The Council on Environmental Quality regulations for implementing NEPA require EISs to discuss possible conflicts and inconsistencies of a proposed action with approved state and local plans and laws.

The project corridor crosses through four counties: Benton and Klickitat Counties in Washington and Umatilla and Sherman Counties in Oregon. Of the 79-mile corridor, 72 miles are located in the state of Washington: 27 miles in Benton County and 45 miles in Klickitat County; and 7 miles are in Oregon: 1 mile in Umatilla County, and 6 miles in Sherman County.

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Land Use Planning Framework

The state and local land use planning framework for the proposed project includes the following regulations:

- City of Umatilla Comprehensive Plan;
- Umatilla County Zoning Code;
- Benton County Zoning Ordinance (BCC Title 11);
- Benton County Shoreline Management Master Plan;
- Benton County Comprehensive Plan;
- Klickitat County Comprehensive Plan;
- Klickitat County Shoreline Master Plan;
- Klickitat County Zoning Ordinance (No. 62678);
- Sherman County Zoning, Subdivision, and Land Development Ordinance;
- Oregon Statewide Planning Goal 11 (Public Facilities);
- Oregon Statewide Planning Goal 3 (Agricultural Lands);
- Oregon Administrative Rules; and
- Washington Administrative Codes.

Please see the Land Ownership and Uses within Project Corridor section of Chapter 3 for a discussion on whether the proposed action is consistent with the state and local plans. The proposed project would be undertaken solely by Bonneville, which is a federal entity. Pursuant to the federal supremacy clause of the U.S. Constitution, Bonneville is not obligated to apply for local development or use permits in such circumstances. Therefore, Bonneville would not make formal application to any of the local jurisdictions for permits such as conditional use permits or shoreline development permits. However, Bonneville is committed to plan the project to be consistent or compatible to the extent practicable with state and local land use plans and programs and would provide the local jurisdictions with information relevant to these permits. (Bonneville would apply for county shoreline permits if the provisions of the Federal Water Pollution Control Act apply, such as for discharges into waters of the U.S.)

Critical Areas Ordinances

The project corridor falls within Seismic Zone 2B of the 1997 Uniform Building Code. The counties in Oregon do not have critical areas ordinances that would address potential geologic hazards in the project site and project corridor. There are no specific

requirements or guidelines issued by the counties with respect to geologic conditions. Current Oregon building codes are specified in Oregon Regulatory Statute (ORS) 455.010 through 455.895. Geologic hazard regulations are overseen by the Oregon Department of Land Conservation and Development, as defined in ORS 660.015.

Klickitat and Benton Counties in Washington have critical areas ordinances that pertain to geologically hazardous areas. Klickitat County's critical areas ordinance provides standards for classification and designation of significant geologically hazardous areas and guidance for reducing or mitigating hazards to public health and safety. Benton County's critical areas ordinance addresses minimum setbacks for development within or adjacent to a geologically hazardous area. See the Geology section of Chapter 3 for further discussion of geology and soils.

Transportation Permits

Width and/or height restrictions occur on SR 14 at the Cook-Underwood Tunnels (Skamania County, Washington), the Hood River/White Salmon toll bridge (Klickitat County, Washington), the Lyle Tunnel (Klickitat County, Washington), and the I-205 to US 97 junction at Maryhill (Klickitat County, Washington). Trucks traveling westbound toward the project corridor on SR 14 will likely pass through most of these areas. The Columbia River bridges also have load weight and size restrictions.

The construction contractor and transmission line facilities manufacturers would consult with the Oregon and Washington Departments of Transportation as well as the Benton, Klickitat, Umatilla, and Sherman Counties Public Works Departments. Necessary permits for transportation of large loads on the roadways would be secured as required. See the Transportation section in Chapter 3 of this EIS for further discussion of transportation issues.

Coastal Zone Management Program Consistency

As an agency of the federal government, Bonneville follows the guidelines of the Coastal Zone Management Act (16 U.S.C. Sections 1451-1464) and would ensure that projects would be, to the maximum extent practicable, consistent with the enforceable policies of state management programs. The proposed project is not in the coastal zone, nor would it directly affect the coastal zone.

Floodplains and Wetlands Protection

The Department of Energy mandates that impacts to floodplains and wetlands be assessed and alternatives for protection of these resources be evaluated. Regulations are provided through 10 CFR 1022.12, and Federal Executive Orders 11988 and 11990. Portions of

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the proposed project fall within the 100-year floodplain of the Columbia River as mapped by the Federal Emergency Management Agency. There are 15 streams that cross the proposed transmission line corridor and flow toward the Columbia River. These streams range from having deeply incised channels to low gradient, meandering channel patterns. Associated floodplains are generally limited to narrow riparian fringes. A total of 25 wetlands (45.0 acres) are present within the proposed transmission line corridor, of which 0.2 acre is located where either construction or operations activity would occur. If a wetland of over 0.10 acres would have to be filled (which is unlikely), appropriate permits from the Corps would be sought. Streams, floodplains, and wetlands are discussed in Chapter 3 of this EIS.

Farmlands

The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.) directs federal agencies to identify and quantify adverse impacts of federal programs on farmlands. The act's purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to nonagricultural uses.

The location and extent of prime and other important farmlands is designated by the Natural Resource Conservation Service (NRCS) and can be found in NRCS soil survey information.

There are no lands designated as prime farmland within the proposed right-of-way. Please see the Land Ownership and Uses within Project Corridor section of Chapter 3 for more discussion on impacts to agricultural lands.

Recreation Resources

None of the project components would interrupt formal existing recreation facilities. Upland bird hunting may be interrupted in the project corridor in Benton County, Washington during construction.

Global Warming

The proposed project would not generate emissions of gases (such as carbon dioxide) that contribute to global warming. The proposed project would clear 54 acres of grassland, agricultural and shrub-steppe vegetation, and an additional 25 acres of mature hardwood trees. A total of 50 acres would be removed from mature hardwood production. The removal of these trees and plants would result in a net reduction in the collectors of carbon in the project area. However, because the amount of clearing would be relatively

small, and because low-growing vegetation would regrow in cleared areas, the proposed project's contribution to global warming would be negligible.

Permit for Structures in Navigable Waters

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) regulates all work done in or structures placed below the ordinary high water mark of navigable waters of the U.S. No work associated with the proposed project would occur in such water bodies. However, the proposed project includes conductors that would span the navigable waters of the Columbia River, a “water of the United States” as defined in the Rivers and Harbors Act. Overhead utility lines constructed over Section 10 waters require a Section 10 permit.

Permit for Discharges into Waters of the United States

The Clean Water Act (33 U.S.C. 1251 et seq.) regulates discharges into waters of the U.S.

Section 401 of the Clean Water Act, the State Water Quality Certification program, requires that states certify compliance of federal permits and licenses with state water quality requirements. A federal permit to conduct an activity that results in discharges into waters of the U.S., including wetlands, is issued only after the affected state certifies that existing water quality standards would not be violated. Bonneville is not expecting any discharges into waters of the U.S.

Section 402 of the act authorizes storm water discharges associated with industrial activities under the National Pollutant Discharge Elimination System (NPDES). For Washington, EPA has a general permit authorizing federal facilities to discharge storm water from construction activities disturbing land of 5 acres or more into waters of the U.S., in accordance with various set conditions. Bonneville would comply with the appropriate conditions for this project, such as issuing a Notice of Intent to obtain coverage under the EPA general permit and preparing a Storm Water Pollution Prevention (SWPP) plan.

Section 404 requires authorization from the Corps in accordance with the provisions of Section 404 of the Clean Water Act when there is a discharge of dredged or fill material into waters of the U.S., including wetlands. Bonneville does not expect any waters (including wetlands) to be impacted by access road or tower construction. Water bodies/wetlands field surveys would ensure that full compliance with the Clean Water Act. If there would be potential impacts, authorization would be sought from the Corps and the appropriate state and local government agencies in Washington and Oregon.

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Please see the Wetlands and Groundwater section of Chapter 3 for further discussion of potential wetland impacts for the project.

The Safe Drinking Water Act

The Safe Drinking Water Act (42 U.S.C. Section 200f et seq.) protects the quality of public drinking water and its source. Bonneville would comply with state and local public drinking water regulations. The proposed project would not affect any sole source aquifers or other critical aquifers, or adversely affect any surface water supplies.

Permits for Right-of-Way on Public Lands

The proposed project crosses mostly privately owned land, with some Tribal, state, and federal land. Bonneville would obtain easements and permits as appropriate for public lands.

Air Quality

The Clean Air Act as revised in 1990 (PL 101-542, 42 U.S.C. 7401) requires EPA and states to carry out programs intended to ensure attainment of National Ambient Air Quality Standards. In the project vicinity, authority for ensuring compliance with the act is delegated to the Oregon Department of Environmental Quality, the Washington Department of Ecology (Central Region and Eastern Region), and the Benton Clean Air Authority. Each of those agencies has regulations requiring all industrial activities (including construction projects) to minimize windblown fugitive dust. None of those agencies regulate the operation of electrical transmission lines or electrical transformers.

The General Conformity Requirements of the Code of Federal Regulations require that federal actions do not interfere with state programs to improve air quality in nonattainment areas. There are no nonattainment areas in the vicinity of the project.

Chapter 70.94 RCW-Washington Clean Air Act and Chapter 173-400 WAC require owners and operators of fugitive dust sources to prevent fugitive dust from becoming airborne and to maintain and operate sources to minimize emissions (AGC, Fugitive Dust Task Force). Benton County Clean Air Authority adheres to an Urban Fugitive Dust Policy and Oregon Revised Statutes (ORS) Chapter 468A outline Air Pollution Control.

Air quality impacts of the proposed project would not be significant, as discussed in the Air Quality section in Chapter 3 of this EIS.

Noise

The Noise Control Act of 1972 as amended (42 U.S.C. 4901 et seq.) sets forth a broad goal of protecting all people from noise that jeopardizes their health or welfare. It places principal authority for regulating noise control with states and local communities. Noise standards applicable to the proposed project are established under ORS Chapter 467 (Noise Control) and the Oregon Administrative Rules (OAR) Division 35 (Noise Control Regulations). Responsibility for enforcement of applicable regulations is assigned to the local sheriff's department. The Oregon Department of Environmental Quality provides assistance and guidance as required.

The allowable hourly noise levels under state law, and potential noise impacts associated with the project, are described in the Noise section in Chapter 3 of this EIS.

Hazardous Materials

The Spill Prevention Control and Countermeasures Act, Title III of the Superfund Amendments and Reauthorization Act, and the Resource Conservation and Recovery Program potentially apply to the proposed project, depending on the exact quantities and types of hazardous materials stored onsite. Regulations would be enforced by the Oregon Department of Environmental Quality, Oregon Department of Health, and the Washington Department of Ecology. In addition, development of a Hazardous Materials Management Plan in accordance with the Uniform Fire Code may be required by the local fire district. Small amounts of hazardous wastes may be generated (paint products, motor and lubricating oils, herbicides, solvents, etc.) during construction or operation and maintenance. These materials would be disposed of according to state law and Resource Conservation and Recovery Act.

In response to the 1989 passage of Public Law 99-145, which mandated the destruction of certain types of chemical warfare agents throughout the U.S., Congress identified the need to upgrade emergency preparedness in cities and counties surrounding chemical stockpiles in the unlikely emergency resulting from storage or subsequent destruction. Within Umatilla County, Oregon, there is a chemical weapons stockpile. The Umatilla Army Depot stores mustard "blister" agents and nerve agents. The eastern portion of the project corridor lies within zones where an emergency preparedness program applies in case of an emergency at the stockpile. For this reason the Oregon's Chemical Stockpile Emergency Preparedness Program was begun. The area surrounding the depot is divided into zones and sectors. The Immediate Response Zone covers an 8-mile radius from the depot; the Protective Action Zone covers a 20-mile radius from the depot; the Marine Safety Zone covers the Columbia River approximately 20 miles above and below McNary Dam. The majority of the proposed transmission line lies within the Protective Action Zone in Benton County with a small area around the McNary Substation in the Immediate Response Zone and the Marine Safety Zone (CSEPP 1999).

Environmental Justice

In February 1994, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, was released to federal agencies. This order states that federal agencies shall identify and address as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income population. (Minority populations are considered members of the following groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic if the minority population of the affected area exceeds 50%, or is meaningfully greater than the minority population in the project area.)

The proposed project has been evaluated for potential disproportionately high environmental effects on minority and low-income populations (see the Socioeconomics section of this EIS in Chapter 3). There would not be a human health or environmental impact on minority and low-income populations from the proposed project.

Notice to the Federal Aviation Administration

As part of the transmission line design, Bonneville seeks to comply with Federal Aviation Administration procedures. Final locations of structures, structure types, and structure heights would be submitted to the Federal Aviation Administration for the project. The information includes identifying structures taller than 200 feet above ground and listing all structures within prescribed distances of airports listed in the Federal Aviation Administration airport directory. Bonneville also would assist the Federal Aviation Administration in field review of the project by identifying structure locations. The Federal Aviation Administration would then conduct its own study of the project and make recommendations to Bonneville for airway marking and lighting. General Bonneville policy is to follow Federal Aviation Administration recommendations.

Federal Communications Commission

Federal Communications Commission regulations require that transmission lines be operated so that radio and televisions reception would not be seriously degraded or repeatedly interrupted. Further, Federal Communications Commission regulations require that the operators of these devices mitigate such interference. Bonneville would comply with Federal Communications Commission requirements relating to radio and television interference from the proposed transmission line if any such interference occurs. While none of the proposed alternatives are expected to increase electromagnetic

interference above existing levels, each complaint about electromagnetic interference would be investigated.